IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL FIRST APPEAL No. 17 of 1984

BHAGTI RAM & ANR.
VS.
RAM JAS & ORS.

Mr. RR NAGORI, for the appellant / petitioner

Mr. JITENDRA CHOPRA, for the respondent

Date of Order : 16.10.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

This appeal has been filed by the defendants, against the judgment and decree of the learned District Judge, Balotra dt. 2.11.1983; decreeing the plaintiff's suit against the appellants, for Rs. 3745/-, along with interest @ 6%, and proportionate cost.

The facts of the case are, that the plaintiff Ramaji Asaram Parlu filed a suit against the eight defendants, being Ramjas, his sons, and legal representatives of Ishardas. It was alleged by the plaintiff, that the plaintiff is a registered partnership firm, and that Ishardas was real brother of the defendant Ramjas. Both of whom were carrying on business in the name of two different firms, M/s. Ishardas Pukhraj and Pukhraj and Company, in partnership, and were having business dealing with the plaintiff. It was alleged that some two

years before Ishardas died, and the defendants no. 4 and 5 are his widow and son, who alone are in possession of the property of the deceased. It was alleged that after death of Ishardas all the defendants were carrying on transactions with the plaintiff on their behalf. With these averments it was alleged, that as on 20.10.1973, on account of the transactions, Rs. 85.45 remained outstanding against the defendants, thereafter the defendants purchased the goods on 24.11.73 to the tune of Rs. 14482.50, and on 8.2.74 goods amounting to Rs. 8014/-, and then made certain payments including supply of certain goods, and accordingly finally, principal sum of Rs. 6665.68 remained outstanding, for which the suit has been filed.

The defendants no. 1 and 3, and defendant no.2 filed separate written statement, while defendants no. 4 and 5 filed separate written statement. However, during pendency of the suit, on 15.1.1983, the other defendants compromised with the plaintiff, and admitting their liability to the extent of 65%, made payment to the plaintiff, and the suit continued only against the two defendants, being legal representatives of Ishardas, who are the appellants. The appellant defendants contested the suit, pleading ignorance about the partnership being registered, and also took a stand, that even before death of Ishardas the brothers were living separately, the two firms were separate, having nothing to do with each other,

inasmuch as firm Ishardas Pukhraj was working only as a commission agent. It was also pleaded that Ishardas has not died on the date as alleged by the plaintiff, but died on 7.5.74, and after his death both partnership came to an end. It was pleaded that Ishardas has left other legal representatives also, as pleaded in the written statement, who are necessary parties. They pleaded ignorance about the present transaction, and also pleaded that there was no contract of interest, therefore, they are not liable to pay any interest, and that after death of Ishardas, other defendants had no right to undertake any transaction of the firm, therefore, the transactions are wholly unauthorised, and on account of the payments made by them, the suit of the plaintiff cannot be said to be within limitation.

During trial the plaintiff examined three witnesses, while the appellants did not lead any evidence.

Deciding issue no.1, about the plaintiff being registered partnership firm, it was held by the learned trial court, that the plaintiff has produced the certificate of registration, and has deposed about the four plaintiffs being the partners, to which there is no rebuttal, therefore, the issue was decided in favour of the plaintiff. Then, issues no. 2 to 5 were decided together, and after believing the plaintiff's evidence; for want of rebuttal on the side of the defendant, the suit was decreed

as above.

Assailing the impugned judgment and decree, learned counsel for the appellant submitted, that since the plaintiff had not shown, that the persons suing as plaintiffs were included in the list of partners, and therefore, by virtue of Section 69 of the Partnership Act, the suit could not be maintained. The other contention raised was, that the suit was ex-facie barred by time.

On the other hand, learned counsel for the respondent supported the impugned judgment.

I have considered the submissions.

Coming to the first contention, in my view, of course a passing plea was taken in the written statement in para-1, but then the plea in substance is regarding the registration of the firm. Then, when the plaintiff has clearly deposed about the plaintiffs being the partners, the testimony was not assailed by cross examining him on this aspect, and then there was no rebuttal on the side of the defendant. Likewise on the question of limitation also, the plaintiff has clearly proved, that Ishardas had died on the date as pleaded by the plaintiff, to which there is no rebuttal, and since the payments have been made by the firm during lifetime of Ishardas, the suit is within time.

It is also significant to note that the Court has found, that both the firms were practically working as one, and any transaction could be entered by any firm, and in that background, admittedly the other defendants, being Ramjas and his sons, have already admitted the liability of the plaintiff, and to the extent of their share of liability, they have made payment to the plaintiffs. Obviously, therefore, since the amount involved qua the appellant is wholly small amount, being little above Rs. 3745/- only, and the other defendants who were the partners of the same firm have admitted their liability, and have made payment, on the consideration of substantial justice, I do not find any sufficient ground to interfere with the impugned judgment and decree.

The appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/